

INVENTOR: McBride et al
TITLE: MEDICAL TESTING AND METHOD

attorney docket: CARDIOBEAT-1

processed data from said server to said apparatus, and displaying said processed data at said apparatus.

It is respectfully submitted that the Examiner has misread the Kumar et al reference.

At the outset, the illustrative embodiments of Kumar et al. do not utilize the Internet. An electronic word search of the Kumar et al reference located only two occurrences of the word "internet" in the entire disclosure. In the next to the last paragraph of the Kumar et al. specification, at Col. 38, lines 25-30, a suggested modification to the structures shown and described is presented in which an additional radio receiver for use in downloading data from/to an Internet server for connection to a remote monitoring station to eliminate the use of a base station. However, no further description or details are made with respect to the proposed suggested modification to the disclosure.

The system that is shown and described in Kumar utilizes conventional direct telephone link communication between patient units 30 and a remote location 50. Fig. 1 does not show, or suggest an Internet connection. To the contrary, FIG. 1 shows that a telephone line or cellular link 40 it utilized to couple unit 30 to unit 50.

In addition, in order to make the elements of applicant's novel invention, the Examiner pieces together aspects of different embodiments shown in Kumar. Kumar does not show, teach or suggest the combination of different pieces as the Examiner has done.

Accordingly, the Examiner's statement in paragraph 3 that Kumar teaches "coupling the test sensors to an apparatus having access to an Internet (fig. 1, part 30) is not shown, taught or suggested. Nor is the statement that "uploading the test measurement data via the Internet to a location remote from the subject." The Examiner points to Fig. 1 and to col. 38 lines 25 -30 as providing support for this contention, but as pointed out, Fig. 1 does not show, teach or suggest

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an Internet connection. Col 38, lines 25-30 states that "A radio receiver may be provided to the patient for attachment to his or her computer for use in downloading software and uploading data from/to an Internet server for connection to a predetermined remote monitoring station connected to a designated node on the Internet." However, it is respectfully submitted that the statement is nonsensical in that a radio receiver can not be used to both upload and download anything. A receiver can only receive. In addition, one of even minimal skill in the art would realize that it is impossible for bidirectional movement of data and/or programs. It is accordingly submitted that taking the teachings of this reference for what it fairly shows, teaches or suggests, that it does not show teach or suggest use of an Internet connection for uploading test measurement data.

Still further, the Examiner at page 3, line 2, states that Kumar et al shows "processing the measurement data at the central server", citing Col. 13, lines 15-18. However, the cited passage as well as the remainder of the description clearly states that "the base station unit 30" is what is described at Col. 13, lines 15-18. Base station unit 30 is not the server and is not equivalent to a server.

Yet further, there is no downloading of processed data from the server 52 to the apparatus30 , since it is the apparatus 30, as described in the description that processes data.

Claim 1 is not shown, taught or suggested by Kumar et al. The remaining claims all depend from claim 1, and for the same reason that claim 1 is not shown, taught or suggested by Kumar et al, claims 4-20 are not shown, taught or suggested by Kumar et al.

Claims 5-7 depend from claim 1 and as pointed out above are not shown, taught or made obvious by Kumar et al. In addition, the Examiner states that "Kumar et al. teaches receiving a

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request at the server from a second apparatus and transmitting the processed data to the second apparatus via Internet." However, the Examiner has attempted to combine different embodiments of the invention, i.e., that of Fig. 5A and that of Fig. 5b and Fig. 1. Still further, nothing in the description of those Figures shows, teaches or suggests an Internet connection. For this additional reason, claims 5-7 are not shown, taught or suggested by Kumar et al.

It is respectfully submitted that the Kumar et al reference does not show, teach or suggest applicant novel invention as set forth in claims 1, 4-13, and 18-20. Accordingly, applicant's claimed invention is not anticipated under 35 U.S.C. 102(e).

The Examiner's rejection of claims 14-17 under 35 U.S.C. 103(a) as unpatentable over Kumar et al in view of Poyser et al. is traversed.

Claims 14-17 depend from claim 1. For the same reason that claim 1 is not shown, taught or suggested by Kumar et al.

In addition, with respect to claims 14 and 16, the Examiner acknowledges that Kumar does not show a second device receiving data from a server and cites Poyser et al as as teaching an on-line method of analyzing electrical transformers that performs analysis of historic data. The Examiner then states that it would be obvious to modify Kumar et al in view of Poyser et al.

It is respectfully submitted that nothing in either reference suggests any combination of the separate teachings as suggested by the Examiner. **The two references are in different International Classifications and are unrelated.** It is submitted that the Examiner utilized hindsight in order to fill perceived voids in the teachings of Kumar et al. The Examiner is reminded that the use of hindsight in the selection of references is not a proper test of novelty. The use of hindsight is impermissible. Accordingly, the suggested combination of references is inappropriate. Furthermore, there is no suggestion in Poyser et al that its teachings may be

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combined with medical application systems, and there is no suggestion in Kumar et al. to combine its teachings with teachings of monitoring electrical transformers. Accordingly on this basis, the combination of references does not show, teach or make obvious applicants claimed invention.

Claims 15-17 all depend from claim 14, and for the same reasons that claim 14 is not shown, taught or made obvious by the combination of references, claims 15-17 are likewise not shown, taught or made obvious by the combination of references.

In addition, with respect to claim 15, the Examiner states that "Kumar et al teaches receiving the second request by Internet(col. 38, lines 25-30)". However, as pointed out above, col. 38, lines 25-30 is a mere suggestion of use of Internet, and the use is at best unclear. The cited passage is silent of receiving the second request via the Internet. For this additional reason, claim 15 is not shown, taught or made obvious by Kumar et al. in combination with Poyser et al.

Claim 17 recites: "encrypting said second processed data at said central server, and decrypting said encrypted data at said second apparatus".

The Examiner states that Kumar et al teaches encrypting patient data at Col. 31, lines 58-59. It is respectfully submitted that the Examiner has misread Kumar. A careful reading of Kumar reveals that it is not patient data that is encrypted. Rather, the encryption is on a checksum based on file size. Nothing at col. 31, lines 58-59 suggests encryption of patient data.

Accordingly, for this additional reason, claim 17 is not shown, taught or made obvious by Kumar et al.

In view of the foregoing comments, it is believed that all the claims presently in the application are in condition for allowance. Reexamination and reconsideration are requested. It

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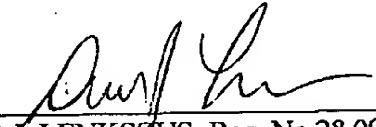
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is further requested that the claims be allowed and that this application be passed to issue. An early notice of allowance would be appreciated.

Respectfully submitted,

DONALD J. LENKSZUS, P.C.

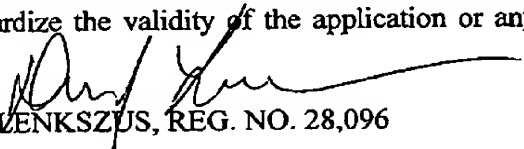
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